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NOT TO BE PUBLISHED

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Butte)

THE PEOPLE, Plaintiff and Respondent, v. CLARENCE BARTHOLOMEW HICKMAN, Defendant and Appellant.	C063688 (Super. Ct. No. 108390)

Defendant Clarence Bartholomew Hickman appeals from an order for involuntary treatment under the Mentally Disordered Offender (MDO) Act (Pen. Code, § 2960 et seq.; see *People v. Cobb* (2010) 48 Cal.4th 243, 247, 251-252), contending no substantial evidence supports the order. We affirm.

BACKGROUND

The petition, filed on July 15, 2009, alleged defendant is a prisoner with a severe mental disorder that "is not in remission or cannot be kept in remission if [his] treatment is not continued and by reason of [his] severe mental disorder [he]

represents a substantial danger of physical harm to others." Those allegations meet the statutory criteria for continued involuntary treatment. (Pen. Code, § 2972.)

Attached to the petition is an affidavit by Dr. Patricia Tyler. Her affidavit states in part: "I, Patricia Tyler, M.D., Medical Director of Napa State Hospital, have legal responsibility for the care and treatment" of defendant, and "I have reviewed the case and it is my opinion that [defendant] qualifies for continued involuntary treatment . . . in that by reason of his severe mental disorder he represents a substantial danger of physical harm to others." Dr. Tyler's affidavit also states her opinion was "supported by Renewal Evaluation of [MDO] Commitment (MH 7020) which is attached and incorporated by reference." She did not say that her opinion was based *only* on that attached evaluation.

The first page of the attached evaluation is a declaration under penalty of perjury by Dr. Tyler, checking boxes to indicate that defendant meets the statutory criteria for continued involuntary treatment, namely, that defendant "has a severe mental disorder as defined by Penal Code Section 2970" that is not in remission, and "[b]y reason of the severe mental disorder the individual represents a substantial danger of physical harm to others." The rest of the evaluation consists of a summary of treatment notes prepared by Dr. Theo Vermont, a staff psychiatrist who had never himself treated or evaluated defendant. Both he and Genevieve Monks, a staff psychologist, signed the treatment summary under penalty of perjury. In part,

the summarized notes detail defendant's criminal and mental history, and state defendant had not made satisfactory progress in treatment.

At a hearing on September 30, 2009, defendant submitted the issue of his continued treatment on the petition and attached report. The trial court explained that it would order "continued involuntary treatment" and "the commitment will continue." The following then occurred:

"MR. STAPLETON [defense counsel]: Your Honor, I've signed an order. I would also like to note that I met with [defendant] and I'm aware of the concerns that the health care providers have regarding his progress.

"I believe that he understands that should he demonstrate a consistent continued improvement in the areas of their concerns, that this Court would perhaps take a different view. And I believe that he's aware of that and is going to work towards that and see some improvement shortly.

"THE COURT: Is that clear to you?

"THE DEFENDANT: Yes, that's clear."

The trial court advised defendant of his right to a trial by court or jury, his right to confront witnesses, his right to present evidence, and his right to silence, and defendant waived those rights. The following then occurred:

"THE COURT: Do you submit it on the petition?

"THE DEFENDANT: Yes."

The trial court then ordered defendant committed for treatment. Defendant timely appealed.

DISCUSSION

Defendant frames his appeal as an attack on the *sufficiency* of the evidence, but in reality he contends the evidence was conclusory, hearsay (or multiple hearsay), and stale. These objections were forfeited in the trial court.

The procedure in the trial court was akin to a "slow plea" in a criminal case, whereby a defendant agrees that guilt or innocence may be determined based on certain evidence, such as a preliminary hearing transcript. (See *Bunnell v. Superior Court* (1975) 13 Cal.3d 592.) Often in such cases, as in this case, it is assumed the finding will be adverse to the defendant, and the procedure is "tantamount" to a guilty plea, but still allows the defendant to challenge the *sufficiency* of the evidence on appeal. (*People v. Martin* (1973) 9 Cal.3d 687, 691.) However, this procedure does not free a defendant from the obligation to lodge evidentiary objections to the *admissibility* of evidence in the trial court, in order to preserve them for the appeal.

"'[T]he rule is well established that incompetent hearsay admitted *without objection* is sufficient to sustain a finding or judgment.'" (*Rupf v. Yan* (2000) 85 Cal.App.4th 411, 430-431 [hearsay statements in sheriff's report], original italics; see 3 Witkin, Cal. Evidence (4th ed. 2000) Presentation at Trial, §§ 393-394, pp. 484-485.)

"A qualified expert is entitled to render an opinion on the criteria necessary for an MDO commitment, and may base that opinion on information that is itself inadmissible hearsay if the information is reliable and of the type reasonably relied

upon by experts on the subject. [Citations.]" (*People v. Dodd* (2005) 133 Cal.App.4th 1564, 1569.)

Dr. Tyler's opinion is almost entirely ignored in defendant's briefing. Dr. Tyler's affidavit recites that, as a medical doctor and the director of the hospital with responsibility for defendant's treatment, she reviewed his case, and was of the opinion that he currently met the statutory criteria for involuntary treatment. If defendant thought that Dr. Tyler was incompetent to give such an opinion, or that the bases therefor were unreliable or not of the type relied on by experts, he should have lodged his objections in the trial court. Absent such objection, her affidavit, standing alone, provides substantial evidence to support the challenged order, as she gave the opinion that defendant met all of the statutory criteria required for an order for continued involuntary treatment under the MDO laws.

Defendant's belated attacks on the treatment summary prepared by Dr. Vermont fare no better, as no evidentiary objections were interposed at the trial court hearing. Further, these attacks about the adequacy and bases of Dr. Vermont's summary do not undermine the value of Dr. Tyler's opinion.

In short, by submitting the matter on Dr. Tyler's report, which included her opinion that defendant met the criteria for continued involuntary treatment, defendant cannot attack that report on the evidentiary grounds asserted by his briefing. Accordingly, his challenge to the sufficiency of the evidence lacks merit, as her opinion adequately supports the order.

DISPOSITION

The order for involuntary treatment is affirmed.

NICHOLSON, J.

We concur:

BLEASE, Acting P. J.

BUTZ, J.